

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
AASIM MCPHEE,

Plaintiff,

v.

SGT. N. LAINO; STATE OF NEW YORK;
ILESHEMA THOMAS; CURTIS EGLOFF;
BRIAN COLLINS; LATANYA TAYLOR;
JACQUELINE WEBBER; BRENDAN
HABERIN; and MELISSA CUOMO,
Defendants.
-----X

Copies Mailed/Faxed
Chambers of Vincent L. Briccetti

**SECOND AMENDED ORDER
OF SERVICE**

22 CV 10095 (VB) SDNY

DOCUMENT

ELECTRONICALLY FILED

DOC #:

DATE FILED: 10/24/23

On July 5, 2023, plaintiff, proceeding pro se and in forma pauperis, filed a second amended complaint adding newly identified defendants, Corrections Officers Ileshema Thomas, Curtis Egloff, Brian Collins, Latanya Taylor, Jacqueline Webber, Brendan Haberin, and Melissa Cuomo. (Doc. #18).

By Amended Order of Service dated July 6, 2023, the Court (i) summarized the relevant procedural history, (ii) instructed the Clerk to issue summonses and deliver to the U.S. Marshals Service all documents necessary to effect service upon the newly identified defendants, (iii) extended the Rule 4(m) deadline to ninety days after summonses were issued for these defendants, and (iv) stayed the time for all defendants to answer, move, or respond to the second amended complaint. (Doc. #21).

On July 7, 2023, summonses were issued as to the newly identified defendants. (Doc. #22). Accordingly, the Rule 4(m) deadline to serve these defendants was October 5, 2023.

On August 21 and 24, 2023, return of service executed forms were docketed as to defendants Collins, Cuomo, Egloff, Thomas, and Webber. (Docs. ##25–27, 30–32). On August 24, 2023, return of service unexecuted forms were docketed as to defendants Haberin and Taylor, which stated they were not on the “current duty roster” and thus Green Haven Correctional Facility refused to accept service on their behalf. (Docs. ##28–29).

In the interest of efficient case management, by Order dated September 21, 2023, the Court instructed the Office of the New York State Attorney General (the “Attorney General’s Office”) to file a letter (i) informing the Court whether it would accept service on behalf of defendants Haberin and Taylor, and (ii) if it would not accept service on their behalf, explain its reasoning and provide alternative addresses where these defendants may be served. (Doc. #36).

On October 5, 2023, the Attorney General’s Office filed a letter with the Court reporting it had been in contact with defendants Haberin and Taylor and it expected it would soon be able to facilitate service of these defendants. (Doc. #38).

Accordingly, by Order dated October 6, 2023, the Court (i) instructed the Attorney General's Office to submit a letter, by October 19, 2023, updating the Court regarding its efforts to facilitate service of defendants Haberin and Taylor, (ii) extended plaintiff's deadline to serve summonses and the second amended complaint on the newly identified defendants to December 6, 2023, (iii) instructed plaintiff that, if the second amended complaint was not served within that time, he should request an extension of time for service, and (iv) stayed the time for all defendants to answer, move, or respond to the second amended complaint. (Doc. #39).

On October 19, 2023, the Attorney General's Office filed a letter informing the Court that service may be made on defendants Haberin and Taylor at the Department of Corrections and Community Supervision Office of Counsel.

Accordingly, it is hereby ORDERED:

1. Because plaintiff is proceeding in forma pauperis, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. The Clerk is instructed to fill out a U.S. Marshals Service Process Receipt and Return form for Corrections Officers Brendan Haberin, and Latanya Taylor with the address of the Department of Corrections and Community Supervision, Office of Counsel, The Harriman Street Campus, Building 4, 1220 Washington Avenue, Albany, New York 12226. Further, the Clerk is instructed to issue summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon these defendants.

2. The time to serve the second amended complaint on defendants Haberin and Taylor is extended to December 31, 2023.

3. The time for all defendants to answer, move, or otherwise respond to the second amended complaint is STAYED pending further Court Order.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. Cf. Coppedge v. United States, 369 U.S. 438, 444–45 (1962).

Chambers will mail a copy of this Order to plaintiff at the address listed on the docket.

Dated: October 23, 2023
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent Briccetti', written over a horizontal line.

Vincent L. Briccetti
United States District Judge